

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKUSDC SDNY  
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DOC #: \_\_\_\_\_  
DATE FILED: June 17, 2009

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JAMAL KEARSE, :  
: Plaintiff, : 07 Civ. 4730 (PAC) (JCF)  
: :  
: - against - : ORDER  
: :  
LINCOLN HOSPITAL (BRONX, NEW YORK), :  
HAND SPECIALIST JOHN DOE (LINCOLN :  
HOSPITAL BRONX N.Y.), :  
: :  
: Defendants. :  
-----x

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Plaintiff Jamal Kearse brings this action against Defendants Lincoln Hospital and Hand Specialist John Doe, an unidentified physician, alleging violations of his constitutional rights in connection with medical treatment he received for a hand injury.

On December 17, 2006, Kearse, then in police custody in the Bronx, was admitted to Lincoln Hospital for treatment of an injury to his right hand. Kearse alleges that on December 22, Hand Specialist John Doe discharged him from the hospital without taking x-rays, which would have revealed that Kearse's hand was broken, and despite the fact that his hand was still visibly infected. Two days later, on December 24, Kearse was admitted to Bellevue Hospital for treatment of the same injury, which ultimately required surgery.

Kearse filed his original Complaint on March 19, 2007, naming Lincoln Hospital and Hand Specialist John Doe as Defendants and seeking unspecified monetary damages for pain and suffering, pursuant to 42 U.S.C. § 1983. On June 4, Chief Judge Kimba Wood dismissed, sua sponte, Kearse's claims against Lincoln Hospital on the grounds that the hospital is not a "person"

and therefore does not have the capacity to be sued under Section 1983. (Order dated June 4, 2007 ('Wood Order') at 3-4.) With respect to Kearse's claims against Hand Specialist John Doe, Chief Judge Wood granted Kearse 60 days' leave to file an amended complaint identifying the physician. (Id. at 3.)

Kearse filed his Amended Complaint on August 3, 2007. The Amended Complaint named 'Hand Specialist (Dr. John Doe) at Lincoln Hospital Bronx, N.Y.' as a Defendant. (Amended Complaint ('Am. Compl.') at 2.) It did not, however, provide any further information regarding the physician's identity. Moreover, despite Chief Judge Wood's Order, the Amended Complaint made a claim for relief against Lincoln Hospital. (Id. at 5.)

The matter was reassigned to this Court on August 10, 2007. On August 22, the Court referred the matter to Magistrate Judge James C. Francis IV for general pretrial proceedings. On September 15, 2008, Lincoln Hospital moved to dismiss the Amended Complaint on behalf of both itself and Hand Specialist John Doe. On December 5, 2008, Magistrate Judge Francis issued a Report & Recommendation ('R&R') recommending that this Court grant Defendants' motion. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), Magistrate Judge Francis provided the parties with 10 days from service of the R&R to file written objections, and advised them that failure to raise timely objections would preclude challenging the R&R on appeal. (R&R at 5.) Neither party has objected to the R&R.

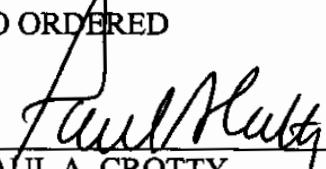
A district court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Upon review, the Court finds no clear error in Magistrate Judge Francis' R&R. First, Kearse's claims against Lincoln Hospital must be dismissed with prejudice because it is not a "person" and therefore is not amenable to suit under 42 U.S.C. § 1983. (See R&R at 4; see also Wood Order at 3-4.) Second, although Courts typically refrain from dismissing suits against "John Doe" defendants "until the plaintiff has had some opportunity for discovery to learn the identities of responsible officials," Davis v. Kelly, 160 F.3d 917, 921 (2d Cir. 1998), in the present matter Kearse had both time and access to his own medical records to identify the physician who treated him. (See R&R at 4-5.) Kearse's claims against Hand Specialist John Doe should therefore be dismissed without prejudice to the filing of a new action should Kearse identify the physician within the applicable statute of limitations. (Id. at 5.)

Accordingly, the Court adopts Magistrate Judge Francis' R&R in its entirety. Kearse's Amended Complaint is DISMISSED with prejudice against Lincoln Hospital, and DISMISSED without prejudice against Hand Specialist John Doe. Pursuant to 28 U.S.C. § 1915(a)(3), I find that any appeal from this order would not be taken in good faith. Plaintiff did not file objections to the R&R, as he was required to do in order to preserve his right to appeal. The Clerk of the Court is directed to close this matter.

Dated: New York, New York  
June 17, 2009

SO ORDERED

  
PAUL A. CROTTY  
United States District Judge

Copies to: Honorable James C. Francis IV  
United States Magistrate Judge

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